

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

May 29, 2012

Lyle W. Cayce  
Clerk

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No. 11-20578  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HERMILO BENITEZ SERRATO, also known as Hermilo Benitez, also known as Hermilo Serrato Benitez, also known as Jesus Sandoval, also known as Hermilo Benitez-Sarrato, also known as Hermilo Benitez-Serrato,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:11-CR-169-1

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Before BENAVIDES, STEWART, and HIGGINSON, Circuit Judges.

PER CURIAM:\*

The attorney appointed to represent Hermilo Benitez Serrato has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Benitez Serrato has filed a response. The record is insufficiently developed to allow consideration at this time of Benitez Serrato's claims of

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 11-20578

ineffective assistance of counsel; such claims generally “cannot be resolved on direct appeal when the claim has not been raised before the district court since no opportunity existed to develop the record on the merits of the allegations.” *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006) (internal quotation marks and citation omitted). We have reviewed counsel’s brief and the relevant portions of the record reflected therein, as well as Benitez Serrato’s response. We concur with counsel’s assessment that the appeal presents no nonfrivolous issue for appellate review. Accordingly, counsel’s motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. *See* 5TH CIR. R. 42.2. Benitez Serrato’s motion to appoint new appellate counsel is DENIED. *Cf. United States v. Wagner*, 158 F.3d 901, 902-03 (5th Cir. 1998).